

CRA-S-1081-2021

Date of pronouncement : June 02, 2022

...Appellant

...Respondent

Mr. Rajeev Anand, Advocate
for the respondent-CBI.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is to set aside the judgment of conviction dated 22.9.2021 passed by the Special Judge, (CBI), Haryana at Panchkula holding the appellant guilty for offence under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'the Act') as well as the order of sentence of even date vide which the appellant was sentenced to undergo RI for a period of three years and to pay a fine of Rs.25,000/- and under Section 7 of the Act and further undergo RI for a period of 04 years and to pay a

fine of Rs.25,000/- for commission of offence under Sections 13(2) read with Section 13(1)(d) of the Act and in default of payment of fine to further undergo RI for a period of 01 year. Both the substantive sentences were ordered to run concurrently.

On 7.4.2022, the following order was passed :-

"Prayer in this application is for fixing an actual date of hearing in the main appeal.

Learned Senior counsel for the applicant/appellant has placed on record order dated 04.04.2022 passed by the Hon'ble Supreme Court in SLP to appeal (Crl.) No.2558/2022 arising out of judgment and order dated 27.10.2021 passed in the main case wherein the following order was passed:-

"We are informed that the appeal is listed for hearing before the High Court on 07.04.2022. Since the High Court is likely to take up the matter for hearing, we need not pass any order at this stage. Accordingly, this special leave petition is adjourned for the day. List on 22.04.2022."

List again on 20.04.2022.

The Lower Court record be requisitioned through a special messenger considering the fact that the Court is closed from 09.04.2022 to 17.04.2022.

The parties are ad idem that the main appeal may be argued on that date."

The case as set up by the prosecution is that on 17.1.2017 a complaint was made by PW Pankaj Sharma to SP, CBI, Chandigarh against appellant/accused who was posted as Works Manager, Jagadhri Workshop, Northern Railways, Yamuna Nagar with the allegations that the complainant was allotted three quotations works for Rs.1,97,200/-, Rs.3,96,000/- and Rs.3,90,000/- for the repair and maintenance work in the Workshop. It is stated that he executed the first two quotation works and has submitted the bills to the Chief Works Manager and had partly executed the 3rd quotation work and had submitted the part bill for the same on 26.12.2016.

The said bill of Rs.2,60,910/- was pending with the appellant. However, in the meantime, on 16.1.2017, one of the employees of the complainant, namely, Jagdeep informed him that the appellant was not passing the bill and asked the complainant to meet him. It is further stated that on a telephonic conversation with the appellant, a bribe @ 2% of the bill amount was demanded for passing the same. It is stated that on an earlier occasion Rs.27,000/- were paid for clearing the bills of first two quotations. The complaint was verified by Inspector Sharad Bhasin and on the basis of the complaint and verification report, a case RCCHG2017A0003 dated 18.1.2017 under Section 7 of the Act was registered against the appellant and the investigation was entrusted to Subhash Chander, Inspector CBI. It is further case of the prosecution that it was decided to lay a trap to catch

the accused red handed and a trap team was constituted, which included Subhash Chander, Inspector ACB, CBI, Chandigarh as trap laying officer, Ashutosh Attri, Inspector ACB, CBI, Shimla, Vijay Kumar, Inspector ACB, CBI, Shimla and Sharad Bhasin, Inspector, ACB, CBI, Chandigarh. Two independent witnesses Pushkar Ji and Ravi Kumar from FCI, Panchkula were made trap independent witnesses. All of them assembled in the house of complainant Pankaj Sharma on 18.1.2017 for preparing pre-trap proceedings. Complainant was introduced to the independent witnesses and the CBI team members. The complaint and verification report were shown to the independent witnesses. The recorded conversation was also played and the team was satisfied that the accused is demanding bribe. Thereafter, marked notes of different denominations total of Rs.17,340/- along with trap kit containing sodium carbonate powder, phenolphthalein powder etc. and other items were collected and a practical demonstration was given to the independent witnesses.

During that preparation, complainant informed the trap team that accused is a clever person and used to accept the bribe money only in envelope, therefore, it was decided to keep the tainted money in an envelope by independent witness Pushkar Ji. Ravi Kumar, another witness was instructed to accompany the complainant. Thereafter, other instructions were given regarding the manner in which the signal is to be given by making a phone call.

Thereafter, the trap team with both witnesses and complainant left the resident of the complainant and reached the office of Robin Bansal. The complainant and shadow witness Ravi Kumar went on a two wheeler and the rest of the trap team members followed in Government vehicles. On reaching the office, Inspector Sharad Bhsain inserted a new SD memory card in a Sony digital voice recorder and put it in the shirt pocket of the complainant on recording mode and a button spy camera was also put on recording mode and placed on the person of the complainant. They were asked to proceed to the office of the accused followed by the trap team.

Thereafter, the complainant and shadow witness entered the office of the accused and gave signal on the mobile phone. Immediately, the team followed them. Inspector Subhash Chander disclosed his identity to the accused. Inspector Ashutosh Attri and Subhash Chander caught hold wrists of the accused and the digital voice recorder was taken out from the pocket of the complainant by Inspector Ashutosh Attri and was switched off. The spy camera was also taken out and switched off. On asking the accused, if he demanded and accepted the bribe from the complainant, he admitted the same. By following the procedure, the hands of the accused were dipped in the sodium carbonate solution and it became pink.

Thereafter, the money was recovered from drawer, the details of the same were prepared and it was sealed with the seal 'CBI ACB 607 CHD'. A rough site plan was also prepared, statements of the witnesses were recorded, the SD memory card and the camera were also sealed by the police with the same seal and accused was arrested at around 5.30 p.m. as per arrest and personal search memo. An intimation of arrest was given to his wife by Inspector Vijay Kumar as well as to the senior officers of Railway Department. The mobile phone used by accused and others were also sealed. The search of the office of Robin Bansal was also conducted in the presence of the independent witnesses. However, nothing incriminating was recovered from the office of the accused. All the documents relating to the bills and the file regarding clearing of previous bills were also taken into possession.

On concluding the investigation, the challan was presented under Section 173 Cr.P.C. and, thereafter, charges were framed under Sections 7, 13(1)(d) read with Section 13(2) of the Act. The accused did not plead guilty and claimed trial.

To prove the case, CBI examined PW1 B. Majumdar, Joint Secretary of Ministry of Railway to prove the sanction of prosecution Ex.PW1/1 and identify his signatures at point 'A'.

PW2 Munish Bindra, Nodal Officer, Bharti Airtel Limited proved the production and seizure memo. Ex.PW2/1 and forwarding

letter Ex.PW2/2 regarding the mobile No.8222812066 issued in the name of Pankaj along with the ID proof which he had submitted at the time along with his application seeking the SIM, which are Ex.PW2/3 to PW2/6. He also proved the certificate under Section 65 of the Evidence Act regarding correctness of the CDR record pertaining to the mobile phone No.9729530413 along with tower location detail.

PW3 Ashish Singh proved certain letters handed over to the CBI as Ex.PW3/1 to Ex.PW3/2, which were issued in the name of Robin Bansal regarding mobile No.9729530413.

PW4 Dr. Subrat Kumar Chaudhury, Senior Scientific Officer CSFL, New Delhi proved a letter Ex.PW4/1 which was a request made by CBI for examination of the sealed parcels along with specimen seal impression. After telling the seals, the parcel was opened and a micro SD Card was found which was marked as 'MC1'. Another SD Card was found containing specimen voice recording of Robin Bansal which was marked as 'SVS-1'. Another micro SD Card was marked as 'SVS-II' containing specimen voice of Pankaj Sharma. Parcel MC-II was sent to the CSFL regarding video tampering examination. This witness also proved his opinion Ex.PW4/2 containing 8 pages under his signatures along with the results. It is stated that the voices marked Ex. MC(1)(L) and MC-I (I)(R) are the probable voices of Robin Bansal and similarly, Ex. MC(1)(P) and MC-I (I)(P) are the probable voices of Pankaj Sharma.

Both were tallied with this specimen voice 'SVS-I' and 'SVS-II'. This witness also proved the envelopes containing the micro SD Cards.

PW5 Sharad Bhasin Inspector CBI stated that he received a complaint from Pankaj Sharma in which Robin Bansal demanded bribe @ 2% of the bill amount. This witness further stated about the proceedings regarding the pre-trap and post-trap memos.

PW6 Manoj Kumar, a helper in the office of Jagadhri Workshop stated that he was posted from January 2015 to 18.1.2017 and as per the directions of Robin Bansal, no stranger or visitor was allowed to enter the office room of Robin Bansal without his prior permission. He further deposed that on 18.1.2017, Robin Bansal neither directed him to allow Pankaj Sharma, Contractor to visit his office nor he knew any Pankaj Sharma, Contractor. This witness was declared hostile and on request of Public Prosecutor, CBI he was cross-examined. In cross-examination, this witness stated that Inspector Harjeet Singh has not recorded his statement and only his name, address, and mobile number were asked. This witness denied the suggestion that on 18.1.2017 Robin Bansal had directed him that Pankaj Sharma, Contractor will come to his office and he will be allowed to come in. This witness was confronted with his statement under Section 161 Cr.P.C. Mark PW6/A but he denied having made any such statement to CBI. This witness further denied the suggestion that

around 1.00 p.m. Pankaj Sharma with a stranger came to the office of Robin Bansal and he allowed to enter the office as he already know Pankaj Sharma but he did not allow the stranger to go inside because he had no prior permission. Again he was confronted with his statement under Section 161 Cr.P.C. Ex.PW6/A but he denied having made any such statement to CBI and again reiterated that he did not know any person by the name of Pankaj Sharma. He even denied that a person shown at point 'X' on a photograph Ex.PW2/3 had visited the office of the accused. He further denied that his statement was recorded by Inspector Harjeet Singh on the same day.

PW7 Sumit Kumar Toor, Junior Engineer in the office of Chandigarh Engineering Department stated that he was asked by the CBI to act as a witness and he went to the room of Inspector Subhash Chander where he introduced to accused Robin Bansal and in his presence afresh memory card was opened and on already prepared transcription, the voice sample of Robin Bansal was recorded in the memory card. He proved the observation memo Ex.PW7/1 in this regard. He stated that Robin Bansal also signed the declaration and the seal was handed over to him.

PW8 Sawinder Singh, another Junior Engineer, Electrical Department, UT., Chandigarh stated that his XEN directed him to report to CBI as a witness. He went to Inspector Subhash Chander and in his

presence the sample voice of Pankaj Sharma was taken in a sound proof room and he proved observation Ex.PW8/1.

PW9 G.C. Singh, Deputy Chief Mechanical Engineer, Jagadhri Railway Workshop stated that on 18.1.2017 he and Amit Silawat had produced the files and measurement book duly signed by him and Amit Silawat pertaining to Contractor Pankaj Sharma before the CBI Officer Subhash Chander and proved the documents, like photocopies of the bills, quotations containing 40 pages as Ex.PW9/1 to PW9/4 etc.

PW10 Amit Kumar Silawat, Chief Vigilance Inspector, Northern Railways deposed about the procedure regarding floating and allotment of tenders. This witness proved certain documents handed over to the CBI as Ex.PW10/1 to Ex.PW10/4, like original invoice bills, measurement books as well as the original service record of Robin Bansal. As per the service record Robin Bansal was posted in Jagadhri Workshop from 2016 to 2017 and mobile No. 9729530143 was allotted to Robin Bansal as per Ex.PW3/2.

PW11 Sunita Kumari, Chief OS, C&W Office, Jagadhri Workshop stated that the bills/invoices were submitted by Pankaj Sharma Contractor for payment to his firm M/s Flyfot Engineering Works, Yamuna Nagar and one order was allotted to the said firm for original invoice of Rs.1,79,200/- was put up before Robin Bansal and,

thereafter, it was put up before Deputy CME, Wagon G.C. Singh, which is Ex.PW9/5. Similarly, another invoice Ex.PW9/6 was put up before Robin Bansal and then before G.C. Singh. Similarly 3rd invoice Ex.PW9/7 was also put up in the same manner before two officials.

PW12 Jagdeep Singh stated that he is working with Pankaj Sharma, Contractor and on 16.1.2017 he visited the office of Robin Bansal for enquiry about passing of the 3rd bill when he was told to ask Pankaj Sharma to meet him personally and he conveyed the message to Robin Bansal. He also stated that his statement under Section 164 Cr.P.C was recorded by the Special Judicial Magistrate CBI, Panchkula which is exhibited as PW12/1. The operative part of the same reads as under:-

“Stated that I am working in Flyfot Engineering Works as Supervisor. On 16.1.2017, I had gone to meet Robin Bansal regarding my bills. He said two bills are cleared. For third bill I should send Pankaj Sharma to meet him. I told this to Pankaj Sharma on mobile that accused Robin Bansal is calling you. He said, he will meet Robin Bansal.”

PW13 Bunty, Helper in the office of Jagadhri Workshop stated that he is working since 2016 and was attached with Robin Bansal in 2017. He also stated that he neither knew who visited the office of Robin Bansal on 17.1.2017 nor knew any person by the name

of Pankaj Sharma. This witness was also declared hostile and permission to cross-examine was granted. He stated that he never stated before CBI that on 17.1.2017 Pankaj Sharma came to meet Robin Bansal. This witness was confronted with his statement under Section 161 Cr.P.C. Ex.P13/1 wherein he stated that he never made any such statement. He also denied the fact that Robin Bansal by ringing the bell called him inside his office and directed him to open an almirah and bring him file and he followed his command. Even to this extent he was confronted with the statement under Section 161 Cr.P.C. (Ex.PW13/1) and denied. He further denied that on 18.1.2017 he came to know that Robin Bansal was trapped by CBI. When confronted with statement under Section 161 Cr.P.C. he also denied this fact and stated that only on 19.1.2017 he came to know about the arrest of Robin Bansal. He even denied the suggestion that his statement was recorded by Inspector Harjeet Singh

PW14 Pankaj Sharma, the complainant deposed that he was allotted three works for repair of center sill of BCNCHL Wagon for Rs.1,97,000/-, modification of BCNHL Wagons door for Rs.3,96,000/- and welding and renewal of roof and doors, body and floor of BOXN etc. for Rs.3,90,000/- by Chief Works Manager, Northern Railway, Jagadhri Work Shop, Yamuna Nagar. He stated that he was asked by his employee Jagdeep Singh that Robin Bansal want to meet him and, thereafter, he met him and Robin Bansal told about some deficiency in the work allotted to his firm. He further stated that two of the bills were

already passed and he should remove the discrepancies. He made the complaint Ex.PW5/2 under his signatures. During testimony of this witness the contents of micro SD card Ex.PW6/6 were played along with the transcription Ex.PW5/6 were shown to this witness and on hearing the aforesaid, he verified the same. He also identified his signatures on the pre-trap memo Ex.PW5/4 and post-trap memo Ex.PW5/5. This witness also proved the statement made under Section 164 Cr.P.C. Ex.PW14/1 and other memos and *zimni* orders Ex.PW14/2 to PW14/8. This witness further stated the during verification of his complaint Robin Bansal has not demanded bribe @ 2% of the bill amount and he had not given Rs.27,000/- to accused Robin Bansal with regard to the passing of his previous bills pertaining to two quotations for Rs.1,97,000/- and Rs. 3,90,000/-. He further stated that Robin Bansal has not accepted any bribe from him. This witness was declared hostile and was allowed to be cross-examined by the Public Prosecutor. He admitted Ex.PW5/2 the contents of his complaint. However, he volunteered that this is second application given by him to SP, CBI as his first application which he wrote was not accepted by CBI official and, thereafter, they were directed to move an afresh application, as per the own version which was got typed on the laptop of one of the official of CBI and it was shown to him and CBI officials wanted that this version be given in the application, Ex.P5/2 and only on that pretext he has signed the same. He further denied having made any statement to CBI

that on 16.1.2017 his employee Jagdeep informed that Robin Bansal wants to meet him and he is not passing the bills or that in conversation between Robin Bansal and himself on the two mobile phones, there was a demand of bribe @ 2% for passing the bill or that he has already paid Rs.27,000/- as a bribe. This witness was confronted with the statement Ex.PW14/9, but he denied that he had made any such statement as he had lodged a hand written complaint to SP, CBI against Robin Bansal to take legal action as per rules but his hand written complaint was not accepted. This witness further denied certain confrontation made with regard to his statement under Section 161 Cr.P.C. Ex.PW14/9 regarding inserting of memory card, visiting the office of Robin Bansal and having made a statement under Section 161 Cr.P.C. in this regard. He even denied the report Ex.PW5/1 regarding the verification done by Inspector Sharad Bhasin and further denied the proceedings of pre-trap proceedings as well as the proceedings which the CBI claims to have taken inside the office of Robin Bansal. During the lengthy cross-examination of this witness he did not support the CBI version on all counts.

PW15 Hirdejit Singh, Judicial Magistrate 1st Class, proved the application moved by CBI for recording statement of Pankaj Sharma under Section 164 Cr.P.C. as it was proved that Ex.PW14/2 and some zimni orders as Ex.PW14/3 to PW14/5.

PW16, Kapil Rathi, Special Judicial Magistrate proved the application Ex.PW12/3 and the statement under Section 164 Cr.P.C. of Jagdeep Singh as Ex.PW12/1.

PW17 Pushkar Ji, Typist in the office of FCI, Panchkula stated that he, along with Ravi Kumar was directed to report the office of CBI and when they reached the office of CBI and, thereafter, they reached the house of Pankaj Sharma at Yamuna Nagar, where the pre-trap proceedings were initiated. On 18.1.2017 Pankaj Sharma and Ravi Kumar proceeded to the office of Robin Sharma where he was trapped and his hands were washed. He also stated that he has signed the envelopes as which are Ex.PW17 to MO-1 to MO-25.

PW18 Ravi Kumar, shadow witness has also deposed on the same and similar line of Pushkar Ji PW17. This witness stated that when he along with Pankaj Sharma reached the office of Robin Bansal he remained standing outside in the *verandah* of the office when Pankaj Sharma entered the office. However, the peon did not allow him to enter the room of the accused. Thereafter, Inspector Subhash came to the office of the accused along with CBI team and he followed him to enter the office of Robin Sharma where the trap proceedings were conducted as noticed above.

PW19 Harjeet Singh, Inspector CBI stated that he is a witness to the verification report Ex.PW5/1 to PW5/3 and the various

seizures memos which are Ex.PW2/1 to PW2/7 and PW10/1 to PW10/4 as well as the other documents prepared during investigation as Ex.PW19/1.

PW20 Subhash Chander, Inspector CBI stated that the FIR was registered on a written complaint dated 17.1.2017 Ex.PW5/2 as per the verification report Ex.PW5/1 submitted by Sharad Bhasin and thereafter, he again gave the complete details of the proceedings and investigation carried out by the CBI.

On closing the prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded in which all the incriminating evidence were put to him. The accused denied having demanded or accepted any amount from the complainant and further denied that having any recovery effected from him. He further stated that he has been falsely implicated on a direction of Mr. Y.C. Modi, the then Additional Director, CBI, who is real brother of Mr. Yashpal Singhal, who was DGP, Haryana. Daughter of Mr. Yashpal Singhal was married to elder brother of accused Robin Bansal, namely, Savin Basnal, who is an IAS in Uttarakhand. The marriage was performed on 19.10.2012 but unfortunately the same was not successful. The accused appellant had a periodical stay with his brother at Tehri in 2013 for preparing the competitive examination of IAS and this was not liked by the daughter of Mr. Yashpal Singhal. Later on, Mr. Yashpal Singhal, former DGP

Haryana also got an FIR registered against Robin Bansal, his parents and brothers Savin Bansal under Sections 3 and 4 of the Prohibition of Dowry Act and Sections 406, 498-A IPC in which they were granted anticipatory bail and later on, the same was compromised and a decree of divorce by way of mutual consent was granted and on that account, by misusing the official position, the accused is involved in the present FIR.

In defence, the accused produced DW1 Shashi Bhushan Bansal, father of the appellant who stated that he has two sons Savin Bansal, an IAS of Uttarakhand cadre of 2009 batch and Robin Bansal accused. Savin Bansal was married to the daughter of Yashpal Singhal, IPS, ex-DGP Haryana on 19.10.2012. Thereafter, Robin Bansal was preparing for UPSC Civil Services examination and was staying with his brother Savin Bansal at Tehri in 2012-13, however, this was not liked by his wife and, later on, the FIR was got registered which ultimately resulted into a compromise followed by a decree of divorce.

It is also stated that even complaints were made in the National Human Rights Commission using derogatory words against the family of DW1 Shashi Bhushan Bansal and even FIR Ex.DW1/1 in FIR No.89 dated 9.9.2014 under Sections 498-A, 323, 506 IPC read with Sections 3 and 4 of the Prohibition of Dowry Act, registered at Police Station Rajpur, Dehradun was registered by the wife of Savin Bansal

leveling false allegations. It is also stated that there was another litigation between the parties as the order of Human Rights Commission, Delhi was stayed by the Uttarakhand High Court in a petition filed by Savin Bansal vide order dated 23.9.2014 Ex.DW1/3 and the family of the appellant was granted the anticipatory bail vide order Ex.DW1/4. It is also stated that various allegations were leveled against each other by both the parties and finally, as per the settlement/compromise deed dated 14.6.2015 (Ex.DW1/8), the matter was settled and a decree of divorce was granted by the District and Sessions Judge, Chandigarh on 4.1.2016. The aforementioned persons believed that the applicant had also sided with his brother Savin Bansal and, therefore, they had even levelled false allegations against him and the involvement of the appellant in the CBI case is a *mala fide* act on the part of the family of Yashpal Singhal, ex-DGP, Haryana.

The trial Court framed the following points for determination:-

- "1. Whether the accused is a public servant and sanction to prosecute him was granted by competent authority and after due application of mind ?
2. Whether accused being public servant made a demand of an amount of Rs.17,340/-, i.e. @2% of bill amount from complainant on 16.1.2017/17.1.2017 and on 18.1.2017 and in pursuance of this demand accused accepted

Rs.17,340/- on 18.1.2017 as illegal gratification other than legal remuneration as a motive in the matter of favouring in passing the pending bill ?

3. Whether the accused abused his official position as public servant and by corrupt and illegal means obtained pecuniary advantage of Rs.17,340/- from complainant ?
4. Whether the accused is liable to be convicted for committing offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of P.C. Act, 1988 ?
5. Final Order ?”

Thereafter, the trial Court vide impugned judgment and order of sentence dated 22.9.2021 held the appellant guilty of the offence under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and sentenced him to undergo punishment for a period of 04 years and to pay a fine of Rs.50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.

Learned Senior Counsel for the appellant has assailed the findings on Point Nos.2 to 5 on the following grounds.

Learned Senior Counsel has argued that as per the statement of PW14-complainant-Pankaj Sharma in his examination-in-chief this witness has stated that he is sole proprietor of M/s Flyfot Engineering Works and used to get contracts in Jagadhari Workshop.

He was allotted three allocation works, i.e. repair of center sill of BCNCHL Wagon for Rs.1,97,000/-, modification of BCNHL Wagon doors for Rs.3,96,000/- and welding and renewal of roof and doors, body and floor of Boxn for Rs.3,90,000/- by the Chief Works Manager, Northern Railways. He has further stated that two, out of the three, works were completed by him and one was partly executed. Two of his bills were passed, while the third was pending. PW12 Jagdeep Singh was appointed by him as Supervisor who told him that the third bill was pending with accused Robin Bansal (this part of the statement was objected to being hearsay) and on 16.1.2017 Jagdeep Singh told him that he should meet Robin Bansal. On 16.1.2017, he contacted CBI before noon and, thereafter, in evening he contacted Robin Bansal on telephone, who sought a meeting with him as there were some deficiencies in work allotted to his firm, which this witness was asked to remove. This witness identify the signatures on complaint dated 17.1.2017 exhibited as PW5/2, which was verified by Inspector Subhash Chander and Sharad Bhasin.

Learned Senior Counsel has further submitted that in the transcription Ex.PW5/6, PW14 Pankaj Sharma and Robin Bansal are talking to each other with regard to clearing of two bills and for the third bill, it was stated that the same will also be cleared. Later on, during this transcription, it is stated that Rs.17,340/- were allegedly offered

and then the conversation ended with a note when PW14 asked Robin Bansal when he should meet him and the reply was "Any Time".

Learned Senior counsel for the appellant has argued that this witness has further stated during the examination-in-chief as under:-

"During verification of my complaint, accused Robin Bansal had not demanded bribe amount of Rs.17,340/- @2% of the bill amount. I had not given Rs.27,000/- to accused Robin Bansal with regard to passing of my previous two bills of quotation of work of Rs.1,97,200/- and Rs.3,96,000/-. Accused Robin Bansal had not accepted any bribe amount from me."

Learned Senior Counsel has further argued that once this witness in examination-in-chief has clearly stated that Robin Bansal has not demanded any bribe @ 2% of the bill amount and further stated that on previous occasion also he has not given Rs.27,000/- for clearing his previous bills and that the appellant has not accepted any amount from him, the entire case of the prosecution falls flat. It is next argued that when this witness was declared hostile by the Public Prosecutor and permission was sought to cross-examine him, he was put to a specific question that if he makes a false statement in the Court he may be prosecuted. To which, PW 14 replied that he knows that. Again a question was put by the Public Prosecutor that you still are deposing

truth in the Court and PW14 replied 'YES'. With regard to confrontation of the complaint Ex.PW5/2 by the Public Prosecutor to this witness PW14, he made the following deposition in examination-in-chief :-

"Volunteered that this is the second application which was given by me to SP, CBI, Chandigarh. The first application that I wrote was not accepted by CBI officials, thereafter they directed me to move the application as per their version which they got typed on their laptop and showed the same to me and wanted that version to be given in the application Ex.PW5/2. I was called by the CBI official for the purpose of submission of my complaint. I do not recollect the name of the CBI official who had summoned me on telephone. I do not recollect the phone number from where I received the call. I received the call on 16.1.2017 but I do not remember the time. I had also made a call to CBI official from my mobile phone No.822212066 but I do not recollect the number to which I made the call to CBI official. I is incorrect that Robin Bansal had demanded bribe @ 2% for passing my bill or that accused Robin Bansal had already taken bribe of Rs.27,000/- from me."

Learned Senior Counsel for the appellant has argued that this witness clearly deposed that he has earlier given a complaint about the appellant, which is the first complaint, which has never seen the light of the day as CBI never produced the same on record. This shows

that CBI was looking for someone who can come forward and complain against the appellant and when PW14 has given some complaint for non-clearance of bill only, in a *mala fide* manner, he was asked to sign compliant Ex.PW5/2, which was drafted and prepared by the CBI officials under the pressure of the Additional Director, CBI due to a matrimonial discord, as per the defence set up by the appellant. Learned Senior Counsel has further submitted that even this witness has stated as under :-

"I did not state to CBI that on 16.1.2017 one of my employee Jagdeep informed me that Sh. Robin Bansal was not passing my bill and he (Robin Bansal) directed him to convey me to meet Robin Bansal or that, accordingly, on 16.1.2017 at around 6.25 p.m. I spoke to Shri Robin Bansal on his mobile No.9729530413 at around 6.25 p.m., I spoke to Robin Bansal on his mobile from my mobile No.822281206 or that during that call, Robin Bansal has demanded bribe @2% of the amount for passing my bill or that Robin Bansal has already taken bribe of Rs.27,000/- from me for passing of my above two bills of quotation work of Rs.1,97,200/- and Rs.3,96,000/- or that accused has threatened me that in case non-payment of bribe, he would not pass my bill."

Learned Senior Counsel has further argued that even in the later part of examination-in-chief, this witness was confronted with various documents; like a statement under Section 161 Cr.P.C. Ex.PW14/9, where he has denied having made any such statement. This witness even pleaded ignorance of the verification report prepared by Inspector Sharad Bhasin PW5.

Learned Senior counsel for the appellant has next argued that even further cross-examination by the Public Prosecutor regarding his statement with regard to the trap proceedings, he even denied the suggestion that he informed CBI that accused used to accept the bribe money in envelope only. During further confrontation with his statement Ex.PW14/9, this witness further denied the instructions issued to him during the pre-trap proceedings as well as the trap proceedings, though he admitted that his signatures were taken on blank papers as he denied the suggestion that all the memos were prepared and this witness signed after reading the same. In further cross-examination of this witness, he even denied about the trap proceedings in the office of the appellant. This witness further denied that Robin Bansal was arrested in this case. Learned Senior Counsel has, thus, argued that PW14 has not at all supported the prosecution version and, therefore, the conviction of the appellant is bad in the eyes of the law.

Learned Senior Counsel further submits that when a

question was put to this witness, the following reply was given :-

"Q. Why did you sign the pre-trap memo Ex.PW5/4 and post-trap memo Ex.PW5/5 without reading the contents of the same ?

Ans. At about mid night or so the CBI people came to my residence and procured my signatures on the documents while I was still having the bout of sleep and I was not in a position to understand what is pre-trap and what is post-trap."

Learned Senior Counsel submits that in view of the explanation given by PW14 Pankaj Sharma, there is no scope for the Court to believe that the memos were prepared by the CBI after making this witness understand and sign.

Learned Senior Counsel has also submitted that during cross-examination PW14 has admitted that he came to know about the arrest of Robin Bansal on 19.1.2017 and he enquired from Inspector Subhash in this context. This witness admitted that in memo Ex.PW5/7 there is no reference of any conversation regarding money.

Learned Senior counsel further argued that one Dinesh Kumar Gaur, Senior Section Officer in Railway Workshop committed suicide on the night of 27.1.2017 naming PW14 Pankaj Sharma and two other accused in suicide note and his wife got FIR No.34 dated 28.1.2017 registered under Section 306 IPC against PW14 Pankaj Sharma and two other persons with the allegation that as per suicide

note, they were harassing and threatening her husband to involve him in a case and CBI may raid his house. On that pretext got his signatures on blank papers. The anticipatory bail of PW14 was dismissed by Additional Sessions Judge, Yamuna Nagar vide order dated 15.2.2017. A reference is made to this order to show credential of PW14, which is as under :-

"5. I have heard learned counsel for the applicant-accused as well as learned Public Prosecutor for the respondent-State assisted by learned counsel for the complainant and have also gone through the case file very carefully.

6. It has been argued by the learned counsel for the applicant-accused that the applicant-accused has been falsely implicated in this case. It has been further argued by the learned counsel for the applicant-accused that the applicant-accused himself is victim in this case as he, being a contractor, his bill in respect of the work done by him, was pending. When he had demanded his dues, then official/officer of Jagadhri Workshop had demanded bribe from him and in the suicide note, the deceased has also mentioned that CBI may raid at any time and that he would not be able to face the CBI, so, it shows that the deceased had committed suicide due to the fear of CBI investigation. It has been further argued by the learned counsel for the applicant-accused that name of the applicant-accused has been falsely mentioned by the deceased in the alleged suicide

note as the applicant-accused never abetted nor instigated the deceased to commit suicide, rather, the applicant-accused has done work for the railways and he had demanded his dues by handing over bill to the concerned authority. It has been further argued by the learned counsel for the applicant-accused that co-accused Som Parkash has already been granted interim bail by the Hon'ble Punjab and Haryana High Court, Chandigarh. It has been further argued by the learned counsel for the applicant-accused that custodial interrogation of the applicant-accused is not required in this case yet, the applicant-accused is ready to join the investigation and thus, prayed that bail application may kindly be allowed and the applicant-accused may kindly be accorded the concession of anticipatory bail.

7. On the other hand, it has been argued by the learned Public Prosecutor for the respondent-State assisted by learned counsel for the complainant that in the suicide note recovered from the wearing clothes of the deceased, there is specific allegation against the applicant-accused and other co-accused to be responsible for their death. It has been further argued by the learned Public Prosecutor for the respondent-State assisted by learned counsel for the complainant that the applicant-accused and co-accused had blackmailed the deceased and they had also obtained the signatures of the deceased on some blank papers. It has been further argue by the learned Public Prosecutor

for the respondent-State assisted by learned counsel for the complainant that all the ingredients to attract the provision of Section 306 IPC are fulfilled in this case. Recovery of MB etc. is to be effected in this case and the custodial interrogation of the applicant-accused is required in this case for the purpose of further investigation and thus, prayed that keeping in view the seriousness and gravity of the offence, bail application may kindly be dismissed.

8. Keeping in view the entire contentions wherein it is not the stage of dwell upon merits of the case, the contentions raised by the applicant-accused to the effect that the applicant-accused has been falsely implicated in this case or the fact as to whether there was no instigation, conspiracy or aid on the part of the applicant-accused compelling the deceased to end his life are touching the merits of the case which are to be adjudged only after recording the trial, the purpose for grant of bail in anticipation of arrest is to ensure that nobody is harassed unnecessarily. However, when the allegations against the applicant are serious, the Court should be slow in intervening. In the present case, nor only the applicant-accused has been specifically named by the complainant in her statement made before the police on the basis of which FIR was registered, rather, in the suicide note recovered from the apparels of the deceased, the applicant-accused has also been specifically named to be one of the person responsible for this death.

Investigation is still in progress and the custodial interrogation of the applicant-accused seems to be essential for the purpose of further investigation in the case and thus, once the custodial interrogation of the applicant-accused is required, then, the applicant-accused is not entitled for the extra ordinary relief of anticipatory bail. Therefore, without commenting on the merits of the case lest it may prejudice the case of either of the parties during trial, the application is hereby dismissed. After due compliance, file be consigned to records.”

Later, his bail application vide CRM-M-6408-2017 was dismissed by this Court on 27.2.2017. It is argued that on 3.3.2017 when statement of PW14 was recorded by the CBI, it had knowledge that he is an accused under Section 306 IPC, but the CBI never handed over his custody to the State Police and rather tried to protect him.

Learned counsel has next argued that with regard to giving the complaint to CBI, this witness, i.e PW14 has explained as under :-

"It is correct that along with me two other accused were named in the FIR under Section 306 IPC. I did not surrender before the police and kept myself away from the reach of the police. I had disclosed this fact to the CBI officials. I requested Inspector Subhash to help me out to get out of that case under Section 306 IPC. I did go to CBI office between 28.1.2017 when the case was registered and 3.3.2017. It is

correct that on 3.3.2017, I did go to the CBI office and I was told to get my statement under Section 164 Cr.P.C. recorded if I wanted to wriggle out of the case registered against me under Section 306 IPC. Between 28.1.2017 and 3.3.2017, I did not go to the police, Yamuna Nagar. I moved an application for anticipatory bail at Yamuna Nagar but the same was dismissed and thereafter, I moved my application for anticipatory bail before the Hon'ble High Court but that application was also dismissed. I do not know as to whether my warrants were issued in the above said case. I moved application Ex.PW14/1 to the CBI hoping that I would be helped in the above said case against me. I did not know as to under what provision the said application was being moved and whether it was a legal requirement to get the statement of such nature moved before the Judicial Court. I wrote the said application on the dictation of CBI officer. I had full faith in CBI with regard to my being saved from the case under section 306 IPC. It is correct that my statement before the learned Magistrate was not given out of my free will but because of the assurance given by the CBI official of helping me in the case under Section 306 IPC to enable me to wriggle out of the same."

Learned Senior Counsel has argued that, in fact, PW14, along with two other persons, was named in the FIR registered under

Section 306 IPC as one of the railway employee has committed suicide and this witness has further stated that he moved an application to CBI hoping that he will be helped by them in the aforesaid case so that he may be saved in the case under Section 306 IPC. Learned Senior Counsel has argued that in view of this explanation given by PW14 about the manner in which he has approached CBI was to save his skin in a case where he was an accused in FIR under Section 306 IPC and as CBI under the pressure of senior officer was looking for an opportunity to find a witness against the appellant, he has been falsely and *mafa fide* implicated in the present case.

It is next argued that the trial Court has wrongly assumed that the appellant has made call to PW14 on 16.1.2017 and 17.1.2017 for raising a demand, whereas to the contrary it was PW14, who has made the call as per Ex.PW3/04 and, therefore, the said observation is against the record. It is next argued that PW12 Jagdeep, an employee of PW14-complainant has has nowhere stated that Robin Bansal either made any demand of money rather PW12 has only stated that with regard to passing of third bill, the accused told him that he wants to meet Pankaj Sharma personally and from this statement, it cannot be inferred that PW14 was called by the appellant for demand of money as it is the own case of PW14 that he was called by Robin Bansal for certain clarifications in his pending bill.

Learned Senior Counsel for the appellant has next argued that the trial Court has relied upon the transcription Ex.PW5/6 and PW5/7 to hold that Rs.17,340/- were demanded for clearing the pending bill. However, from the statement of PW5 it is not proved that how the demand was made and in the transcription there is no specific demand of money and the transcriptions cannot be interpreted in a manner that is done selectively by the trial Court. It is next argued that if the transcriptions are read in entirety no such demand is made out.

Learned Senior Counsel has next argued that to prove the charge, the prosecution is to prove the demand clearly and distinctly and it should be proved that it was made voluntarily by the accused himself from the complainant, whereas in the instant case, the statement of complainant PW14 nowhere proves the said fact as at the first instance, he has stated that he has given first complaint in this regard, which was destroyed by the CBI and later he was trying to save his own skin in an FIR under Section 306 IPC. It is next argued that if the version of PW14 as per his statement is taken to be correct, once CBI came to know that he is an accused in an FIR under Section 306 IPC, instead of handing over him to the local police, which was investigating the said case, CBI took it as an opportunity to frame the appellant.

It is next argued that PW18, shadow witness Ravi Kumar has firmly stated that when the trap procedure took place, he did not go inside the room of the accused as Peon did not allow him and did not see what has transpired. Learned Senior Counsel has referred to the operative part of his examination-in-chief, which reads as under :-

"When we reached outside office of accused Robin Bansal, I was stopped by Peon of the office of accused. Pankaj Sharma had opened the door and found two persons were sitting in the office of accused Robin Bansal. After sometime, accused Robin Bansal along with two persons came out from the office and went to the office of mechanical engineer of Jagadhari Work Shop. We remained waiting for the accused near his office. After some time accused Robin Bansal came back and went in his office and complainant followed him and went inside his room. I was again stopped by Peon of the office of accused and did not allow me to enter the room of accused and door was closed. I remained outside the varanda of office of accused. After some time, I saw Inspector Subhash coming to the office of accused along with rest of CBI trap team members. I was standing outside the varanda of the office of the accused and I also followed Inspector Subhash and went inside the office room of accused Robin Bansal."

Learned Senior Counsel has further submitted that once this witness has himself admitted that he has not witnessed the handing over the money by PW14 Pankaj Sharma, no reliance can be placed on his statement in this regard to prove that there was any demand of money or it was paid by the complainant. Even in cross-examination, this witness has stated as under :-

"It is correct that I did not go inside the room of the accused and as such I did not see what transpired inside the office. Volunteered that I was stopped by Peon of accused Robin Bansal to go inside. I told CBI official that I had not heard, saw anything or nothing had taken place in my presence, therefore, I will not like to become a witness to any fact which had taken place inside the office."

It is next argued that even in the pre-trap and post-trap proceedings PW14-complainant Pankaj Sharma has stated that the pre-trap memo was not prepared in his presence and even hand wash proceedings were not done in his presence. This witness has denied in cross-examination by the Public Prosecutor all the proceedings regarding pre-trap memo and, therefore, nothing is proved. Learned Senior Counsel has further submitted that even the statement of the Investigating Officer PW19 Inspector Harjeet Singh is surrounded by suspicions controversies as he has stated that the statement of PW14

was not recorded under Section 164 Cr.P.C. because he had a doubt about veracity of the trap. Learned Senior Counsel has referred to this part of the statement, which reads as under :-

"I had not got the statement recorded under Section 164 Cr.P.C. of the witness because I had a doubt about the veracity of the trap. I had not recorded the statement of Pankaj at any point of time."

It is next argued that PW19 has even admitted that he had prepared draft statement under Section 161 Cr.P.C. The operative part of the statement of PW19 reads as under :-

"Initially, draft of the statement was prepared in presence of the witness thereafter, the same is converted into fair and in case of necessity addition and deletion is also made as per wish of witness. Once it is finalized, only then copies for the defence, prosecutor as well as sanction authority is prepared."

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"It is correct that the statements of G.C. Singh and Ashish Singh available in Court file and the one which is supplied to accused are in different. Both these statements which are supplied to accused bear my signatures."

It is next argued that this witness admitted that the statements of PW G.C. Singh and Ashish Singh, which are part of Court

file, are different from the one which are supplied to the accused. It is argued that a very strange procedure is adopted in this case by the CBI that even the statement recorded under Section 161 Cr.P.C. were pre-drafted and even in some cases, more than one copy was prepared and were supplied and different copies were placed on the Court file. It shows that the investigation is tainted. This witness has further admitted in cross-examination that the statement under Section 161 Cr.P.C. the date was originally typed as '6.1.2017', which was later on, changed to '16.1.2017'. Learned Senior Counsel has further argued that this squarely show that much prior to the alleged date of trap, CBI was already preparing all the documents to falsely implicate the appellant. This witness has next stated that he had not investigated the about the date when the PW14 has submitted the bills and did not visit the Jagadhri Workshop to ascertain the procedure of file movement file for clearing the bill. This witness also admitted that a case under Section 306 IPC was registered against PW14 on a complaint given by one Pankaj Sharma. Learned Senior Counsel has even referred to the statements of PW3 Ashish, PW6 Manoj and PW13 Bunty, who had categorically stated that their statements were never recorded by PW19 Harjit Singh. However, it remains unexplainable how PW19 has recorded the statements of these witnesses under Section 161 Cr.P.C. a part of charge-sheet. Despite the fact that he himself admitted that he never

recorded the statement of PW14-complainant under Section 164 Cr.P.C., though it is part of the record.

Learned Senior Counsel has next argued that the appellant has produced sufficient strong defence evidence to prove that the prosecution is a vindictive act of *mala fide* at the instance of the then Additional Director Shri Y.C. Modi, IPS, who is the real brother of Yashpal Singhal, IPS, ex-Director General of Police, Haryana, whose daughter was married to real brother of the appellant, namely Savin Bansal, IAS of Uttarakhand cadre, which resulted in divorce. The appellant was considered as a bone of contentions. The learned Senior Counsel referred to FIR Ex.DW1/A registered against the family of the appellant wherein Savin Bansal is accused No.1, parents as accused Nos. 2 and 3 and appellant as accused No.4. With regard to appellant, the allegations in FIR reads as under :-

"That my brother-in-law Mr. Robin Bansal is also in league with other accused in torturing and harassing me. The solemnization of my marriage got delayed for nearly 1 year and 9 months because Mr. Robin Bansal was to appear for Civil Services Examination and he wanted that my husband should be at his back and call all the time and no time should be wasted on account of the marriage. Once my husband and I went to Dhanaulti without informing Mr. Robin Bansal, Mr. Robin Bansal

rang up my husband on that day at Dhanaulti and got angry with my husband and me as we had not informed him about our visit and we had to return after some time because of bad mood husband, the reason being my brother-in-law. The honeymoon trip of mine was not discussed by my husband with me but was planned in consultation with Mr. Robin Bansal and was also shortened because of him. Just to harass me, our honeymoon trip was for 04 nights only in Kerala. My husband will always pass on the gifts brought by me for him from my parent's house to my brother-in-law in order to insult me. Mr. Robin Bansal, my brother-in-law, will try to be around my husband all the time on the pretext of taking lessons from accused No.1 for his Civil Services Examination. It was wondered what type of teaching was required from my husband all the time for a person and who had earlier cleared even the main examination. My husband and Mr. Robin Bansal would get their leaves sanctioned on false pretences and by furnishing fake and forged documents just to be together. There have been many other instances where Mr. Robin Bansal deliberately instigated my husband, who would become cruel to me and demean me. However, he will pose in front of all relatives that he is the person who is

effectively mediating between my husband and me all the time."

It is next argued that it has come in the statement of DW1, father of the appellant as well as Savin Bansal, who has given all the details about the matrimonial discord between his other son Savin Bansal and daughter of Mr. Yashpal Singhal, real brother of Mr. Y.C. Modi.

Learned Senior Counsel has referred to the statement of DW1 Shashi Bansal, which reads as under :-

"On the complaint of Mahima daughter of Yash Pal Singhal referred to above, an FIR was registered against my son Savin Bansal, me, my wife and Robin Bansal and certified copy of the same is Ex.DW1/1 (consisting of 31 pages). Similarly, the certified copy of the FIR, which was lodged by Savin Bansal on 9.8.2014 is Ex.DW1/2 (consisting of two pages). Against the order of Human Rights Commission, Delhi, Savin Bansal moved to Uttarakhand High Court, where the Hon'ble High Court of Uttarakhand stayed the order of National Human Rights Commission dated 22.8.2014 vide order dated 23.9.2014 and certified copy of the same is Ex.DW1/3 (consisting of 3 pages). Vide order dated 16.10.2014, the Hon'ble High Court of Uttarakhand passed the order granting pre-arrest bail to Savin Bansal and all of us.

Certified copy of the order is EX.DW1/4 (consisting of 4 pages). Savin Bansal Bansal after seeing interference in his life by Yash Pal Singhal, who extended threat to his life to sent a letter to President and Hon'ble Home Minister of India. The letter sent to the Hon'ble Home Minister of India is Ex.DW1/5 (consisting of 2 pages). Similar letters were sent to other authorities as well, the postal receipts of said letters are collectively exhibited as Ex.DW1/6 (consisting of one page). On 30.10.2014, when I felt apprehension to the life and criminal intimidation to my son Savin Bansal and Robin Bansal as well as me, I sent the letter to Registrar General, Hon'ble High Court of Punjab and Haryana, Chandigarh. A copy fo this leter is Ex.DW1/7 (consisting of 3 pages). The psot receipt of this letter is affixed on this letter. After these letters, Shri Yas Pal Singhal through his known sent a proposal for compromise, which was finally settled on 14.6.2015. The original settlement/ compromise deed is Ex.DW1/8 (consisting of 11 pages). Finally, the decree of divorce by mutual consent was passed by District Judge, Chandigarh on 4.1.2016. At the time of compromise on 14.6.2015, after compromise was arrived at and was reduced in writing, Shri Yas Pal Singhal, his brothers and brother-in-law Sudhir insisted that now accused Robin

Bansal should seek apology in front of Panchayat, in which entire family of Shri Yash Pal Singhal was present including his brothers. Though, Robin Bansal had no role in the differences between Savin Bansal and his wife Mahima daughter of Shri Yash Pal Singhal, on the asking of my co-brothers sought apology by touching his ears. In this manner, accused Robin Bansal was humiliated. CBI officials came to my residence in Sector 7, Ambala on 18.1.2017 and then on 19.1.2017 and searched my house as well as bank lockers. My house was searched continuously for 13 hours and we are humiliated. I asked them why we are being harassed then the search team leader perhaps his name was Ashok by using hard words said that 'jab pungta liya hai to bhugatna padega'. When I asked with whom I had purchased difference then he uttered that DG Sahab and our boss Mr. Y.C. Modi. The CBI team was looking the particular thing and during this period they were informing somebody on phone during regular interval that nothing has been found, but they were directed to bring whatever is available. After this, they took away all my personal files, pass-books, policies etc. etc. During this process, my wife was badly handed by them, they did not hear my request that she is heart patient, but they pushed her

in one of the room in the house and threatened to ask her to stay there only.”

Learned Senior Counsel for the appellant has argued that because of matrimonial discord, the entire family of the appellant, including his parents were falsely implicated in FIR and even brother of the appellant has given complaints against the family of his in-laws, which ultimately resulted into the compromise and a decree of divorce by mutual consent and the complainant's despite party in that case believed that the appellant is the bone of contention of matrimonial discord and, therefore, they were looking for an opportunity to indulge him in a false case.

Learned Senior Counsel has next argued that in the findings recorded by the trial Court in this case are not based on proper appreciation of the well settled principle of law.

Learned Senior Counsel has referred to the judgment dated 28.3.2014 **B. Jayaraj Vs. State of A.P. (Crl. Appeal No.696 of 2014)** reported as (2014) 13 SCC 55, to submit that it has been held by the Hon'ble Supreme Court that the demand of illegal gratification is *sine qua non* to constitute the offence under Section 7 of the Act and mere recovery of currency notes can not constitute the offence under Section 7 of the Act unless it is proved beyond reasonable doubt that accused voluntarily accepted the money knowing it to be a bribe. The operative part of the judgment reads as under:-

"7. In so far as the offence under [Section 7](#) is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under [Section 7](#) unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P.[1] and C.M. Girish Babu Vs. C.B.I.[2]

8. In the present case, the complainant did not support the prosecution case in so far as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Exbt.P-11) Before LW-9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW-1 and the contents of Exhibit P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material

available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under [Section 7](#). The above also will be conclusive in so far as the offence under [Section 13\(1\)\(d\)\(i\)\(ii\)](#) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established.

9. In so far as the presumption permissible to be drawn under [Section 20](#) of the Act is concerned, such presumption can only be in respect of the offence under [Section 7](#) and not the offences under [Section 13\(1\)\(d\)\(i\)\(ii\)](#) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under [Section 20](#) of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under [Section 20](#) can be drawn are wholly absent.

10. For the aforesaid reasons, we cannot sustain the conviction of the appellant either under [Section 7](#) or under [13\(1\)\(d\)\(i\)\(ii\)](#) read with [Section 13\(2\)](#) of the

Act. Accordingly, the conviction and the sentences imposed on the accused-appellant by the trial court as well as the High Court by order dated 25.4.2011 are set aside and the appeal is allowed."

While relying upon the **B. Jayaraj's** judgment, Hon'ble the Supreme Court in judgment dated 14.9.2015 in '**P. Satyanarayana Murthy Vs. The Distt. Inspector of Police and another**' (Criminal Appeal No.31 of 2009) has reiterated the said observation. The operative part of the order reads as under :-

"20. In a recent enunciation by this Court to discern the imperative pre-requisites of [Sections 7](#) and [13](#) of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under [Sections 7](#) as well as [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7](#) and [13](#) of the Act. Qua [Section 20](#) of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under [Section 7](#) and not to those under [Section 13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act, it is contin-

gent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under [Section 20](#) of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d) (i)&(ii) of the Act and in absence thereof, unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or 13 of the Act would not entail his conviction thereunder.

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25. In reiteration of the golden principle which runs through the web of administration of justice in criminal cases, this Court in [Sujit Biswas vs. State of Assam](#) (2013)¹² SCC 406 had held that suspicion, however grave, cannot take the place of proof and

the prosecution cannot afford to rest its case in the realm of "may be" true but has to upgrade it in the domain of "must be" true in order to steer clear of any possible surmise or conjecture. It was held, that the Court must ensure that miscarriage of justice is avoided and if in the facts and circumstances, two views are plausible, then the benefit of doubt must be given to the accused.

26. The materials on record when judged on the touch stone of the legal principles adumbrated herein-above, leave no manner of doubt that the prosecution, in the instant case, has failed to prove unequivocally, the demand of illegal gratification and, thus, we are constrained to hold that it would be wholly unsafe to sustain the conviction of the appellant under [Section 13\(1\)\(d\)\(i\)&\(ii\)](#) read with [Section 13\(2\)](#) of the Act as well. In the result, the appeal succeeds. The impugned judgment and order of the High Court is hereby set-aside. The appellant is on bail. His bail bond stands discharged. Original record be sent back immediately."

Learned Senior Counsel has then referred to judgment dated 21.2.2022 passed in '**K. Shanthamma Vs. The State of Telangana**', (Criminal Appeal No.261 of 2022) wherein the Hon'ble Supreme Court has observed as under :-

"15. Thus, this is a case where the demand of illegal gratification by the appellant was not proved by the

prosecution. Thus, the demand which is sine quo non for establishing the offence under [Section 7](#) was not established.

16. Hence, the impugned Judgments will have to be set aside. Accordingly, the appeal is allowed. The conviction of the appellant for the offences punishable under [Sections 7](#) and [13\(1\)\(d\)](#) read with [Section 13\(2\)](#) of the PC Act is set aside and the appellant is acquitted of the charges framed against her."

Similar view has been taken by the Hon'ble Supreme Court in **Krishan Chander Vs. State of Delhi**, reported as (2016) 3 SCC 108, wherein while relying upon the **B. Jayaraj's case**, it is observed as under :-

"35. The learned Senior Counsel for the appellant has also placed reliance upon the case of Banarsi Dass referred to supra wherein it was held that: (SCC pp. 456-57, para 24) "24. [In M.K. Harshan v. State of Kerala](#) this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under: (SCC pp. 723-24, para 8) '8. It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has

obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification.'..." (emphasis supplied) In view of the aforesaid reasons, the approach of both the trial court and the High Court in the case is erroneous as both the courts have relied upon the evidence of the prosecution on the aspect of demand of illegal gratification from the complainant-Jai Bhagwan (PW-2) by the appellant though there is no substantive evidence in this regard and the appellant was erroneously convicted for the charges framed against him. The prosecution has failed to prove the factum of demand of bribe money made by the appellant from the complainant-Jai Bhagwan (PW-2), which is the sine qua non for convicting him for the offences punishable under [Sections 7](#) and [13\(1\)\(d\)](#) read with [Section 13\(2\)](#) of the PC Act. Thus, the impugned judgment and order of the High Court is not only erroneous but also suffers from error in law and therefore, liable to be set aside.

For the reasons stated supra, the impugned judgment and order of the High Court as well as the trial court are set aside. The appeal is allowed. The Jail Superintendent is directed to release the appellant

forthwith from the Jail if he is not required in connection with any other case. The Registry is directed to communicate the above portion of the order to the concerned Jail Superintendent to comply with the directions issued to him."

Learned Senior Counsel has also relied upon judgment dated 24.9.2014 passed in **M.R. Purushotham Vs. State of Karnataka (Criminal Appeal No.1578 of 2011)**, wherein, again, while relying upon **B. Jayaraj's** judgment, it is held that once the complainant himself has disowned what he has stated in the initial complaint and there is no other evidence to prove that the accused raised any demand, the evidence of the complainant and the contents of exhibits cannot be relied upon that the same is sufficient proof of demand made by the accused. The operative part of the judgment reads as under :-

"The above decision is squarely applicable to the facts of the present case. When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Exh.P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence of PW3 Kumaraswamy and the contents of Exh.P1 complaint cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused. The High Court was not correct in holding the demand alleged to be made by

the accused as proved. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1)d) of the Act and the conviction and sentence imposed on the appellant are liable to be set aside.

7. For the aforesaid reasons the appeal is allowed and the conviction and sentence imposed on the appellant/accused under Section 13(1)(d) read with Section 13(2) of the Act are set aside and he is acquitted of the charges. Bail bond, if any furnished by the appellant, be released."

Learned Senior Counsel for the appellant has further relied upon judgment dated 14.7.2017 passed in **'Mukhtiar Singh (since deceased) through his L.R. Vs. State of Punjab'** (Criminal Appeal No.1163 of 2017), wherein the Honble Supreme Court has held that the proof of demand is to be held to be an indispensable essentialty and inflexible statutory mandate for an offence under Sections 7 and 13 of the Act. The operative part of the judgment reads as under :-

"25. It would thus be patent from the materials on record that the evidence with regard to the demand of illegal gratification either of Rs.3,000/- which had been paid or of Rs.2,000/- as made on the day of trap operation is wholly inadequate to comply with the pre-requisites to constitute the ingredients of the offence with which the original accused had been

charged. Not only the date or time of first demand/payment is not forthcoming and the allegation to that effect is rather omnibus, vague and sweeping, even the person in whose presence Rs.3,000/- at the first instance is alleged to have been paid i.e. Santosh Singh Lamberdar, has neither been produced in the investigation nor at the trial. In other words, the bald allegation of the complainant with regard to the demand and payment of Rs.3,000/- as well as the demand of Rs.2,000/- has remained uncorroborated. Further to reiterate, his statement to this effect lacks in material facts and particulars and per se cannot form the foundation of a decisive conclusion that such demand in fact had been made by the original accused. Viewed in this perspective, the statement of complainant and the Inspector Satpal, the shadow witness in isolation that the original accused had enquired as to whether money had been brought or not, can by no means constitute demand as enjoined in law as an ingredient of the offence levelled against the original accused. Such a stray query ipso facto in absence of any other cogent and persuasive evidence on record cannot amount to a demand to be a constituent of the offence under [Section 7](#) or 13 of the Act.

26. In addition thereto, not only the prosecution version of demand and acceptance of illegal gratification in the police station seems to be unusual, contradictions of the witnesses, PW-1, PW-2 and PW-5 with regard to the location of the transaction relating to

Rs.2,000/- also renders it doubtful. It is also noticeably unusual that the currency notes when allegedly handed over by the complainant to the original accused, the same instead of being keenly kept with him, were placed casually in the card board box placed on his table. Though the original accused, apart from imputing his false implication at the instance of Superintendent of Police Cheena, said to be the relative of the complainant could not adduce any evidence to consolidate the same, the fact remains that this officer at the relevant point of time was indeed Superintendent of Police at Mohali and was the superior of PW5 who led the trap operation.

27. On an overall appreciation of evidence on record, in the context of the elucidation of law pertaining to proof of the ingredients of [Sections 7](#) and [13](#) of the Act as adverted to herein-above, we are of the unhesitant opinion that the prosecution has failed to prove the charge levelled against the original accused beyond all reasonable doubt. The charge against him therefore fails. The Trial Court as well as the High Court had failed to analyse the factual and legal aspects as involved in their true perspectives and resultantly the determinations made are not sustainable. The impugned judgment and order of the High Court affirming the conviction and sentence recorded by the Trial Court is set aside. The appeal is allowed.”

Learned Senior Counsel has argued that in the instant case, once the complainant PW14 Pankaj Sharma has stated that his original complaint given to the CBI was destroyed and the CBI Inspector himself drafted a complaint on his laptop and asked the complainant to sign reflects that material evidence has been withheld by the CBI by not producing the original complaint. Learned Senior Counsel has then referred to judgment dated 5.4.2010 passed in '**Banarsi Dass Vs. State of Haryana**' (Criminal Appeal No.630 of 2003), wherein it is held as under :-

"10. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. Applying these tests to the facts of the present case, P-10 and P-11 were neither the eye-witnesses to the demand nor to the acceptance of money by the accused from Smt. Sat Pal Kaur (PW-2). It is unfortunate but true that both PW-2 and PW-4 made statements before the Court which were quite different from the one made by them before the police during the investigation under [Section 161](#) of the IPC.

Gurmej Singh (PW-4) completely denied the incident and refused to acknowledge that the sum of Rs. 900/- only was demanded by the accused from PW-2 in his presence and that the money was accepted in the Patwar-khana by the accused. PW-2 obviously has not stated the complete truth before the Court. Though after being declared hostile in her cross-examination she has supported some part of the prosecution case, but she has virtually denied the essential ingredients to bring home the guilt of the accused either under [Section 5](#) (2) of the Act or under [Section 161](#) of the IPC. She seems to have forgiven the accused for making such a demand and made such a statement before the Court that the Court should also ignore the offence. We are not and should not even be taken to have suggested that PW-10 and PW-11 have not made correct statement before the Court or that the Court has disbelieved any part of their statement. But, fact of the matter remains that their statement with regard to demand and acceptance is based on hearsay i.e. what was told to them together by PW-2 and even by PW-4 at that stage. The money was certainly recovered from the pocket of the accused vide memo Ex. P-D. We, therefore, do not accept the contention on behalf of the accused that the amount was not recovered and the recovery is improper in law. Ex. P-D has duly been attested by witnesses. Thus, it cannot be said that the recovery from the pocket of the accused is unsustainable in law and is of no consequence.

11. To constitute an offence under [Section 161](#) of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of [Section 5](#) (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused. In the case of [M.K. Harshan v. State of Kerala](#) [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

".....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers

from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the meaning of Section 5(1) (d) of the Act, particularly when the version of the accused appears to be probable.”

The Hon’ble Supreme Court, considering the fact that the two material witnesses were declared hostile held that the benefit of doubt on technical ground should be given to the accused and set aside the judgment of conviction. Learned Senior Counsel for the appellant has further relied upon the judgments of the different High Courts, wherein, following the aforesaid judgments, the accused were acquitted. For the sake of brevity, the aforesaid judgments are not referred to.

Learned Senior Counsel has lastly argued that the trial Court has wrongly put reverse onus on the appellant to dispel the evidence led by the prosecution regarding the telephonic conversation Ex.PW5/6, which reads as under :-

“Accused : *Mein kuchh nhi bolta yaar Pankaj
bilkul bhi nhi swal hi nhi paida hota.*

Complainant : *Do ke hisab se.*

Accused : As you wish.

Complainant : *Thek hain 17340/- ho gye. Shi ke kuchh hain isme kami peshi.*

Pause

xxx

xxx

xxx

xxx"

Learned Senior Counsel has referred to paragraph 123 of the impugned judgment to submit that incorrect finding has been recorded that the words "As you wish" means admission of bribery because subsequent to that it is the complainant who has stated the figure as Rs.17,340/- but subsequently on behalf of the appellant/accused, there is no acceptance as it was a pause in the talk which the trial Court has held that the same would mean acceptance.

Learned Senior Counsel further submits that if the entire statement is read, nothing has come from the mouth of the appellant that he has demanded anything and even the call was made by the complainant himself.

Learned Senior Counsel, with reference to the judgment of the Hon'ble Supreme Court in **Banarsi Dass's** case (*supra*) has again submitted that the trial Court has erroneously put the onus to negate the said fact though it is held by the Hon'ble Supreme Court that it is settled canon of criminal jurisprudence that the conviction of the

accused cannot be founded on the basis of inference and the offence should be proved against the accused beyond reasonable doubt.

In reply, the learned counsel for the CBI has argued that the trial Court has passed a well reasoned judgment based on the appreciation of the statement of all the prosecution witnesses. It is argued that at the first instance that the complainant PW14 has stated that he approached the CBI wherein, a complaint was given and, thereafter, pre-trap proceedings were initiated and by joining independent witnesses and, thereafter, the verification of the proceedings were conducted and during the trap proceedings the appellant was got arrested as he has accepted the marked currency notes handed over to PW14.

Learned counsel for the CBI has referred to the statement of PW5, who has proved the complaint Ex.PW5/2 as well as the statement of recovery witness PW17 Pushkar Ji, in whose presence the amount was recovered from the drawer of the accused. Reference is also made to the statement PW19, the Investigating Officer Harjit Singh, who conducted the investigation.

It is also argued that the prosecution has proved the guilt of the appellant.

Learned counsel for the CBI has relied upon **Hazari Lal Vs. State (Delhi Administration)** (1980) 2 SCC 390, to submit that

investigation under Section 114 of the Act of the Evidence Act, the Court can presume the existence of the fact which it thinks likely to have been happened during the natural human conduct, public and private business in relation to the fact of a particular case. Learned counsel has further submitted that it is held by the Hon'ble Supreme Court that where the rest of the evidence is sufficient to establish that accused has obtained money from the complainant, the charge under the provisions of Corruption Act is proved.

Learned counsel for the CBI has also relied upon **Neera Yadav Vs. Central Bureau of Investigation**, (2017) 8 SCC 757 to submit that where under Section 13 of the Prevention of Corruption Act, the elements of any of the three sub-clauses are met, the same would be sufficient to constitute the offence of criminal misconduct under Section 13(1)(d) and all the three wings of clause (d) are independent and, therefore, the conviction of the appellant is well founded.

Learned counsel for the CBI has then relied upon **Vinod Kumar Vs. State of Punjab**, (2015) 3 SCC 220, wherein the Hon'ble Supreme Court has upheld the conviction of appellant under Section 7 of the Act, despite the fact that the complainant has not supported the prosecution version fully. The operative part of the judgment of Hon'ble Supreme Court reads as under :-

"9. To bring home the charges against the accused-appellant, the prosecution examined eight wit-

nesses. PW-1 to PW-4 are formal witnesses. PW-5, the complainant resiled from his previous statement and was cross-examined by the prosecution. Sher Singh, PW-6, a clerk in the office of Tehsildar, Rajpura had joined the police party as an independent witness. He supported the case of the prosecution in detail. Jagdish Verma, PW-7, in his examination-in-chief, supported the prosecution case in all aspects, but in cross-examination, resiled from his examination-in-chief. The witness, PW-7, was declared hostile on a prayer being made by the Public Prosecutor and was re-examined. Narinder Pal Kaushal, PW-8, DSP of Vigilance Bureau who had led the raiding party on 25.1.1995, in his deposition, deposed in detail about the conducting of the raid and recovery of the amount.

10. The accused, in his statement under [Section 313 CrPC](#), denied the allegations and took the plea of false implication due to party faction and animosity. It was his further stand that he was brought from his office and was taken to the office of the Tehsildar and thereafter to the Vigilance office.

11. The learned trial Judge, on the basis of the evidence brought on record, came to hold that though the complainant had not supported the case of the prosecution yet prosecution had been able to prove the demand and acceptance of the bribe and the recovery of the tainted money from the accused and, therefore, the presumption as envisaged under [Sec-](#)

[tion 20](#) of the Act would get attracted and accordingly convicted the accused and sentenced him, as has been stated hereinbefore.

12. In appeal, it was contended before the High Court that when the testimony of Baj Singh, PW-5, and Jagdish Verma, PW-7, the shadow witness, was absolutely incredible, the same could not have been pervertedly filtered by the learned trial Judge to convict the accused-appellant for the crime in question. It was also urged that mere recovery of the currency notes would not constitute the offence under [Section 7](#) of the Act. It was also propounded that the offence under [Section 13\(2\)](#) of the Act would not get attracted unless the demand and acceptance were proven. Non- involvement of any independent witness in the raid was also seriously criticised. The High Court posed the question whether the prosecution had been able to prove the factum of demand of bribe, its acceptance and the recovery of the money from the possession of the accused. With regard to demand of bribe, the High Court placed reliance on the testimony of the independent witness Sher Singh, PW-6, and the examination-in-chief of Jagdish Verma, PW-7, and came to hold that the demand of bribe had been proven. It appreciated the deposition of PW-7 and the documents, especially, the Chemical Examiner's report of the hand wash liquid and came to hold there had been acceptance of bribe. Relating to the recovery of the tainted money, the High Court took note of the fact that the ocular testimony had been

duly corroborated by the documentary evidence and hence, the recovery had been proved.

13. Be it noted, the High Court placed reliance upon [Raghubir Singh V. State of Haryana](#)[5] and [Madhukar Bhaskarrao Joshi V. State of Maharashtra](#)[6] and eventually came to hold that the prosecution had proven its case to the hilt and resultantly affirmed the conviction and order of sentence passed by the trial Court, but reduced the sentence of 2 years' rigorous imprisonment to one year."

In reply, learned Senior Counsel for the appellant has argued that except PW14 Pankaj Sharma, there is no other witness, who had seen passing of any bribe money to the appellant as the shadow witness PW18 Ravi Kumar has clearly admitted that he never entered the office of the appellant along with PW14 Pankaj Sharma as he was not allowed to go inside and he went inside the office along with trap team. It is further argued that PW14 Pankaj Sharma-complainant has narrated the correct version that the appellant has not made any demand of bribe or he has given the same.

Learned counsel has further submitted that in view of the judgment cited by him, mere recovery of amount does not constitute an offence unless it is proved that there was demand made by the accused himself followed by acceptance of bribe money whereas in the instant

case, there is no evidence to this effect and rather, the involvement of the appellant is *mala fide* in view of the statement of DW1.

After hearing learned counsel for the parties, I find merit in the present appeal for the following reasons :-

- (a) The complainant PW14 Pankaj Sharma has set up a case that his employee-Jagdeep Singh PW12 informed him that appellant has called him with regard to some objection for passing his bill and, later on, when he had a telephonic conversation with him, the appellant demanded bribe amount @ 2% of the bill, which were pending. However, in examination-in-chief of this witness as well as in the cross-examination by the Public Prosecutor when this witness was declared hostile the allegation are not proved.
- (b) As per the operative part of the statement as reproduced above, this witness has clearly admitted that out of 03 bills, two were cleared by the appellant and for the third bill, he was informed that there was some shortcoming in the same. This witness has clearly stated that during verification of his complaint, appellant had not demanded any bribe @ 2% of the bill amount and, he had not given Rs.27,000/- to accused Robin Bansal for passing the previous two bills and the appellant has not accepted any bribe amount from him.
- (c) When this witness was confronted with a question by the Public Prosecutor that does he know making a

false statement in the Court can lead to his prosecution in accordance with law, this witness replied in affirmative and said that he is deposing truth in Court.

- (d) The most important part of his statement which is not dealt with by the trial Court is that this witness stated that Ex.PW5/2 is the second application as the first application which he wrote was not accepted by the CBI official, and, thereafter, the CBI official directed him to move the application as per their version which they got typed on their laptop and wanted that version to be given in the application Ex.PW5/2. The first application which according to this witness, was given to CBI was never produced on record and rather, the evidence suggests that the same was destroyed and Ex.PW5/2 is a typed application prepared by the CBI officials themselves, which was taken as a complaint and PW14 Pankaj Sharma was asked to sign the same. In further cross-examination by the Public Prosecutor this witness stated that he did not inform the CBI on 16.1.2017 that his employee Jagdeep Singh PW12 informed him that Robin Bansal is not passing bills or that, later on, in the evening he had a talk with Robin Bansal on mobile phone wherein a demand @ 2% of the bill amount for passing of the bill was made.
- (e) Further, in cross-examination by the Public Prosecutor, a specific question was put how did this witness signed the pre-trap memo Ex.PW5/4 and post-trap memo Ex.PW5/5, upon which PW14 replied

that CBI officials came to his house at 12.00 o'clock (mid night) and asked him to sign the documents, and he was not in a position to understand what the contents of the same as he was under bout of sleep and does not know what are the pre-trap or post-trap memos.

- (f) Further, when the defence counsel cross-examined PW14, he clearly admitted that he along with two other accused were named in the FIR under Section 306 IPC and he has requested Inspector Subhash Chander of CBI to help him out in the case against him and he even moved an application Ex.PW14/1 to CBI hoping that he will be helped in the case against him. This witness stated that FIR under Section 306 IPC was registered against him and two other accused as one railways employee committed suicide naming PW14 as main accused in suicide note that PW14 was extending threat that CBI may raid his (deceased) house. The FIR was registered on 28.1.2017 and as per deposition of PW14, he visited CBI office from 28.1.2017 to 3.3.2017 though his anticipatory bail application was dismissed by the Court of Sessions and High Court. The very fact that CBI official allowed him to visit their office in intervening period and not handed over him to State Police which was investigating the FIR under Section 306 IPC raises a suspicion on their credibility.
- (g) Though, voluminous evidence has been led by the CBI with regard to transcription of the conversation between the appellant and PW14 Pankaj Sharma on

16.1.2017 it is denied by PW14 Pankaj Sharma on all aspects when he was confronted by the Public Prosecutor. Also, the fact that in the trap proceedings, the trap team arrested the appellant and recovered the amount from the drawer of the appellant but mere recovery does not prove the demand of bribe when the complainant PW14 has clearly denied having made any such demand.

- (h) The shadow witness PW18 Ravi Kumar is not a witness to the proceedings when allegedly PW14 Pankaj Sharma has handed over the money to the appellant as he has categorically stated that he was sitting outside the office and went in the office only along with the trap team which came later on and, therefore, there is no independent witness even to handing over the amount by PW14 to the appellant.
- (i) Even from the statement of PW12, Jagdeep Singh, the employee of PW14, who allegedly on 16.1.2017 communicated to PW14 Pankaj Sharma that he should meet the appellant regarding clearing of the 3rd bill, has nowhere deposed in the entire statement that the appellant has asked him to inform PW14 Pankaj Sharma regarding demand of any bribe as his statement is only to the extent that the appellant wanted to meet PW14.
- (j) On reappraisal of the entire evidence, this Court finds that in fact, PW14 Pankaj Sharma is a *de facto* complainant who has not supported the prosecution version as it has come in the statement that the application Ex.PW5/2 forming basis of registration of

the FIR was the second application, which was got typed by the CBI officials on a laptop as they wanted the version given in the application Ex.PW5/2 should be as per the CBI officials and first was never made part of investigation of Section 173(2) Cr.P.C. report.

- (k) This witness has further in a natural way stated that his two previous bills were cleared by the appellant and he had never paid any amount to him in lieu thereof and the disputed third bill also signed by the appellant on 16.1.2017 itself, whereas the trap was laid on the next day, which makes the CBI prosecution doubtful.
- (l) Even the statement of PW19 Harjit Singh, the Investigating Officer, is shaky as this witness has stated that he has not got the statement of the PW14 Pankaj Sharma recorded under Section 164 Cr.P.C. because he had a doubt about veracity of trap and had not recorded the statement of PW Pankaj Sharma at any point of time. In cross-examination, this witness has further stated that initially he had prepared the draft statements and later on, converted into a fair statements and after finalizing the copies were given. This witness has even admitted that it is correct that the statements of PW G.C. Singh, Ashish Singh available on the Court file and the one supplied to the accused are different and both the set of statement bears his signatures. Yet another suspicion circumstance coming from the mouth of this witness is that the date on the statement of Pankaj Sharma under Section 161 Cr.P.C. was originally typed as

'6.1.2017' and by overwriting it was made as '16.1.2017' which raises a suspicion that the statement was prepared much earlier.

- (m) In view of the judgment of Hon'ble the Supreme Court in **Banarsi Dass's** case (*supra*), wherein it is held that it is settled canon of criminal jurisprudence that the conviction of an accused cannot found on the basis of inference and the offence should be proved against the accused beyond reasonable doubt. The finding recorded by the trial Court that the onus is on the accused to dispel the conversation PW5/6 is incorrect as the primary onus is on the prosecution to prove this fact. Moreover, a perusal of the said conversation nowhere suggest that it is the appellant who has demanded any amount and, rather it is the complainant who had stated about the amount and, thereafter, there is a pause in the conversation, which has been wrongly taken as admission on the part of the appellant.
- (n) Thus, on reappraisal of prosecution and defence evidence, this Court find that appellant has led a probable defence having bearing on the merits of the case.
- (o) In view of the judgment of the Hon'ble Supreme Court in **B. Jayaraj's** case (*supra*), which is consistently followed in subsequent judgments, i.e. **P. Satyanarayana Murthy's; K. Shanthamma's; Krishan Chander's; M.R. Purushotham's** and **Mukhtiar Singh's** cases (*supra*), where it is held that mere recovery of currency notes from the accused

without proof of demand would not establish offence under Section 7 as well as Section 13(1)(d) of the Act, therefore, the conviction of the appellant cannot be upheld.

In view of the above, this Court finds that the impugned judgment of conviction and order of sentence passed by the trial Court is not sustainable as the prosecution has failed to prove the demand of bribe and acceptance of the same as there is no witness of the same and the complainant has not supported the version and, therefore, in view of the well settled law that mere recovery is not sufficient to hold a person guilty under Section 7 read with Section 13 of the Prevention of Corruption Act.

Accordingly, this appeal is allowed and the judgment of conviction and order of sentence dated 22.9.2021 passed by the Special Judge, CBI, Panchkula are set aside and the appellant is acquitted of the charge.

June 02, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO